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No.

IN THE

Supreme Court of the United States

October Term, 1980

AMERICAN BELL INTERNATIONAL INC.,
Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN AND THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT BEFORE JUDGMENT

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QUESTIONS PRESENTED FOR REVIEW

1. Does the President have authority to nullify an attachment obtained by a U.S. national against property of Iran, in a pending action, without providing an alternative forum in which meaningful relief can be obtained?

2. Does the nullification of an attachment obtained by a U.S. national against property of Iran constitute an uncompensated taking in violation of the Fifth Amendment when the U.S. national cannot proceed before the Iran-U.S. Claims Tribunal and may be unable to obtain relief from the Court of Claims?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT BEFORE JUDGMENT

Petitioner, American Bell International Inc. ("ABII"),[1] respectfully petitions this Court, pursuant to 28 U.S.C. § 1254(1) and Rule 18 of the Rules of this Court, for a Writ of Certiorari to the Court of Appeals for the District of Columbia Circuit, prior to judgment, in the case of *American Bell International Inc. v. Islamic Republic of Iran et al.*, No. 81-1652.

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[1] A list of ABII's parent companies and affiliates is included as Exhibit A to this Petition. ABII has no subsidiaries.

OPINION BELOW

The district court issued no opinion; its order is unreported, and is set forth in the Appendix. App. 1a. The district court ruled from the bench; the ordering portion of the transcript is set forth in the Appendix. App. 5a. There is no Court of Appeals decision or opinion.

JURISDICTION

The order of the district court dissolving the writ of attachment against ABII was entered on June 11, 1981. Notice of Appeal from that judgment under 28 U.S.C. § 1292(a)(1) was filed and docketed (Case No. 81-1652) in the United States Court of Appeals for the District of Columbia Circuit the same day.[2] App. 2a-3a. Under 28 U.S.C. § 1254(1), this Court has jurisdiction to review before judgment the appeal now pending in the Court of Appeals.

CONSTITUTIONAL PROVISIONS, STATUTES, EXECUTIVE AGREEMENTS, EXECUTIVE ORDERS, AND REGULATIONS INVOLVED

This case involves the following constitutional provisions, statutes, executive agreements, executive orders, and regulations: U.S. Constitution, Art. I § 8, Art. II §§ 2, 3, Amendment 5; International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq;* Trading With the Enemy Act, 50 U.S.C. App. §§ 1 *et seq.;* 28 U.S.C. §§ 1254, 1292, 1330, 1502, 1605; Executive Orders 12170, 12205, 12277, 12279-12281, 12294; Iranian Assets Control

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[2]An order vacating an attachment is an interlocutory order from which the court of appeals has jurisdiction under 28 U.S.C. § 1292(a)(1). *Swift & Co. Packers v. Compania Colombiana Del Caribe,* 339 U.S. 684, 688-89 (1950).

Regulations, 31 C.F.R. Part 535, §§ 535. 213 (46 Fed. Reg. 26477 as amended by 46 Fed. Reg. 30341), 535.214 (46 Fed. Reg. 26477 as amended by 46 Fed. Reg. 30341), 535.215(46 Fed. Reg. 14334 as amended by 46 Fed. Reg. 26477), 535.218 (46 Fed. Reg. 14334 as amended by 46 Fed. Reg. 26477), 535.221 (46 Fed. Reg. 14335 as amended by 46 Fed. Reg. 30341), 535.222 (46 Fed. Reg. 14335), 535.418 (44 Fed. Reg. 75353 removed effective January 19, 1981, 46 Fed. Reg. 14337), 535.504 (44 Fed. Reg. 67617 as amended by 46 Fed. Reg. 14336), 535.805 (44 Fed. Reg. 66834); the Declaration of the Government of the Democratic and Popular Republic of Algeria; the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran. The pertinent texts of the foregoing are set forth in the Appendix.

STATEMENT OF THE CASE

Proceedings Below

On January 30, 1980, petitioner filed suit in the United States District Court for the District of Columbia against the Government of Iran and Iran's Ministry of Defense. Petitioner alleged that defendants had breached two contracts entered into in the mid-1970's under which petitioner was to assist Iran in developing an integrated nationwide telecommunications system. Petitioner sought damages of $69.6 million.

Petitioner's contracts, entered into with the "Imperial Government of Iran", provide that:

> All differences and disputes which may arise between the two parties resulting from interpretation of the Articles of the Contract or the execu-

> tion of the works which cannot be settled in a friendly way, shall be settled in accordance with the laws of Iran and *with referring to the competent Iranian courts.* (Emphasis added.)

On April 1, 1980, defendants moved to dismiss, on the ground, *inter alia,* that venue was improper in light of the contract provision quoted above. On May 9, 1980, after President Carter banned travel by U.S. citizens to Iran, defendants withdrew their venue objection.

On April 30, 1980, the district court ordered a Writ of Attachment before Judgment in the amount of $69.6 million against the defendants' remainder interest in the Foreign Military Sales Fund ("FMS Fund") held by the United States Treasury in Treasury Account No. 97-11X8242.IR, pursuant to the Arms Export Control Act, 22 U.S.C. §§ 2251 *et seq.* (1979). The attachment was served on May 5, 1980, after petitioner posted a bond in the amount of $139.2 million, as required by local law. D.C. Code § 16-501(e) (1973 ed.)

On May 19, 1980, the parties stipulated that the Islamic Republic of Iran had been served by diplomatic note. On October 31, 1980, the district court ruled that petitioner had served the Ministry of Defense.

On August 13, 1980, the United States filed a Suggestion of Interest with the district court requesting that all further proceedings be stayed indefinitely. On October 7, 1980, the district court stayed further proceedings (except for briefing and deciding the issue of adequacy of service). The stay was dissolved by the district court *sua sponte* on January 27, 1981.

The President's Actions

The American Embassy in Tehran was seized on November 4, 1979. On November 14, 1979, President Carter issued Executive Order No. 12170, 44 Fed. Reg. 65,729 (1979). App. 50a, which blocked certain Iranian property. The Executive Order stated that the President was acting pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701 *et seq.* (Supp. 1980). In an announcement issued the same day, the White House stated,

> [t]his order is in response to reports that the Government of Iran is about to withdraw its funds. The purpose of this order is to insure that claims on Iran by the United States and its citizens are provided for in an orderly manner. App. 109a.

Treasury regulations issued on November 15, 1979, *inter alia,* blocked the removal or transfer of Iranian assets in the United States, and prohibited any attachment, judgment, lien, or other judicial process with respect to property in which Iran held an interest. *See* 31 C.F.R. Part 535 (1980). On November 26, 1979, Treasury issued a general license authorizing judicial proceedings against Iran, but not the entry of or execution on any judgment or decree. 31 C.F.R. § 535.504(a), (b). On December 19, 1979, a clarifying regulation stated that "the general authorization for judicial proceedings contained in § 535.504(a) includes pre-judgment attachments." 31 C.F.R. § 535.418. App. 79a.

The hostage crisis was resolved through two executive agreements between the United States and Iran, dated January 19, 1981, set forth in the Declaration of the

Government of the Democratic and Popular Republic of Algeria ("General Declaration"), and the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims By the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration").

As relevant here, the General Declaration provided for the resolution of commercial claims by U.S. nationals against Iran and of litigation pending in U.S. courts with respect to such claims. Paragraph B of the General Principles of the General Declaration provides:

> It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration. App. 93a-94a.

The terms of the "binding arbitration" referred to in Paragraph B are contained in the Claims Settlement Declaration, which creates an Iran-U.S. Claims Tribunal with jurisdiction to decide "claims of nationals of the United States against Iran . . . if such claims . . . arise out of debts, contracts . . . expropriations or other measures affecting property rights . . . ." Article II, § 1. App. 102a. However, the Tribunal does not have jurisdiction over:

> claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position. App. 103a.

To satisfy awards rendered by the Tribunal, Iran will deposit in a security account, $1 billion (out of assets returned from the United States, including assets now subject to writs of attachment). General Declaration, ¶7. App. 97a. Whenever the balance in that account falls below $500 million, Iran is to deposit additional funds. *Id.*

Executive Orders 12279, 12280, and 12281, issued on January 19, 1981, to implement the Algerian Declarations revoke the general license for attachments previously granted. 46 Fed. Reg. 7919-24 (Jan. 23, 1981). App. 60a-68a. Executive Order 12294, issued February 24, 1981, confirms the January 19, 1981, Orders and suspends "[a]ll claims which may be presented to the Iran-U.S. Claims Tribunal under the terms of Article II" of the Claims Settlement Declaration. 46 Fed. Reg. 1411 (Feb. 26, 1981). App. 69a. Treasury regulations issued February 26, 1981, effective January 19, 1981, implement these orders. 46 Fed. REg. 14330 *et seq.* (Feb. 26, 1981).

The United States filed a Statement of Interest with the district court on February 26, 1981, seeking to nullify petitioner's attachment. Identical statements were filed in other pending Iran cases.

On March 18, 1981, ABII moved the district court for an order requiring defendants to state their position whether the Tribunal would have jurisdiction of petitioner's claim, in light of the exclusionary language of the Claims Settlement Declaration and the choice-of-Iran court provision of petitioner's contracts with Iran. Petitioner stated that it would vacate its attachment voluntarily if Iran agreed to take the position before the Tribunal that petitioner's claim was cognizable by the Tribunal. App. 14a-15a. Iran refused to take a position, and the district court ruled that it could not compel Iran to do so. App. 10a.

The District Court Order

On June 11, 1981, the district court ruled from the bench that petitioner's attachment be vacated, App. 1a, 5a, on the ground that petitioner's case was controlled by the decision of the Court of Appeals for the District of Columbia Circuit in *American International Group, Inc. v. Islamic Republic of Iran, et al.*, No. 80-1779 (June 5, 1981) (typescript opinion) ("*AIG*"). The district court stayed its order for five business days, to enable ABII to docket an appeal and petition this Court for a Writ of Certiorari before Judgment. App. 1a. The stay terminates upon the final disposition of this action by the Court, or on July 15, 1981, whichever occurs first. Thereafter, the Government will be free to transfer the FMS Fund,[3] leav-

[3] Financial assets in domestic banks must be transferred to Iran by July 19, 1981. General Declaration ¶ 6. App. 96a. Although FMS Funds are not subject to the July 19 deadline, the United States has stated that

ing petitioner with no further access to Iranian assets in this country.[4]

On June 11, 1981, petitioner filed an interlocutory appeal in the United States Court of Appeals for the District of Columbia Circuit (Case No. 81-1652), under 28 U.S.C § 1292(a)(1). App. 2a-3a.

REASONS FOR SEEKING REVIEW BEFORE JUDGMENT BY THE COURT OF APPEALS

Principles of sound jurisdictional administration weigh strongly in favor of certiorari before judgment in this case, so that it may be consolidated and heard with *Dames & Moore v. Donald T. Regan, The Secretary of the Treasury of the United States of America, and the United States of America,* No. 80-2078. Petitioner's case presents somewhat different constitutional issues from those presented in *Dames & Moore.* Both cases, however, grow out of the events in Iran. The issues presented are related and involve consideration of the same executive orders, agreements, statutes, regulations, and precedents. Moreover, unless this Court grants immediate review of the district court order, petitioner's attachment will be vacated and the Government will be free to transfer the attached assets to Iran.

"there is no reason for delay" in transferring the Funds. Reply of the United States to Plaintiff's Response in Opposition to the U.S. Statement of Interest, p. 6, filed with the district court in this action on June 5, 1981.

[4]The February 24, 1981, amendments to the Iranian Assets Control Regulations prohibit prejudgment attachments of assets in which Iran held an interest on November 14, 1979. 31 C.F.R. § 535.504, 46 Fed. Reg. 14336 (Feb. 26, 1981). App. 80a. ABII cannot now attach any "old" Iranian assets, including the FMS Fund, left within the jurisdiction of the United States.

In vacating petitioner's attachment, the district court expressed the view that this case should be heard by the Supreme Court when it disposed of *Dames & Moore:*

> I would like to say that I feel this issue is one that should and can conveniently be joined with the other issues that are approaching the Supreme Court in order that there can be an overall resolution. App. 6a. (Gesell, J.)

If certiorari is granted, petitioner will adhere to the briefing schedule established for *Dames & Moore*.

REASONS FOR GRANTING THE WRIT

Petitioner's case is similar to *Dames & Moore,* but with one important difference: As we read the *Dames & Moore* petition, Dames & Moore challenges the inherent authority of the President to settle claims and his statutory power to nullify attachments, whether or not U.S. claimants are afforded an alternative forum in which to seek relief. That is a far more sweeping challenge to the President's authority than is asserted by ABII. ABII does not challenge the President's authority to settle claims or nullify attachments when an alternative forum for relief is provided. (ABII was and still is prepared to vacate its attachment if it can proceed before the Tribunal.) Petitioner argues only that the President lacks authority to nullify petitioner's attachment *and* agree to a claims settlement program from which petitioner is excluded.

A ruling in *Dames & Moore* that the President may not lawfully nullify attachments for any claimants, whether or not their claims are cognizable by the Tribunal, would preserve ABII's attachment as well.

But the converse is not true. The Court does not necessarily dispose of ABII's claim by ruling against *Dames & Moore.* The Court can sustain ABII's position without invalidating, as to claimants who can proceed before the Tribunal, the action taken to implement the Algerian Declarations and without placing the United States in default of its international obligations.[5] Granting ABII's petition and consolidating it with *Dames & Moore* would thus enable the Court to dispose promptly of all issues presented by the President's nullification of attachments. We respectfully submit that this is of imperative public importance. S.Ct. Rule 18.

We discuss below, *first,* the difference between the ABII forum selection clause and the Dames & Moore clause, *second,* how the forum exclusion issue affects the President's authority under IEEPA and, *third,* how it affects the Fifth Amendment issue.

1. **Arbitrability**

As noted above, the Tribunal does not have jurisdiction over "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts." App. 103a. ABII's contracts with Iran provide that all disputes "shall be settled in accordance with the laws of Iran and with referring to the competent Iranian courts."

The Dames & Moore contract provides that all disputes shall be settled by conciliation before a three-member con-

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[5]So far as we are aware, only one other reported case, *Touche Ross & Co. v. The Islamic Republic of Iran,* Civ. No. 80-502 (D.D.C.), presents a clear forum exclusion clause.

ciliation board, with "resort to the courts of Iran" only if either party refuses to accept the board's decision.[6]

In the United States Statement of Interest filed in the district court below, the Government expressed its belief that forum selection clauses generally should not be regarded as "binding" because of changed circumstances. It went on to state:

> Even where such an exclusive jurisdiction clause is binding, the United States interprets this provision of the Declaration as excluding from the Tribunal only those claims which arise from contracts that specifically limit the resolution of disputes *solely* to Iranian courts, *i.e.*, claims arising from a contract that allows for arbitration or any other procedure prior to judicial resolution through Iranian courts could be heard by the Tribunal. (Emphasis in original.)

Both Dames & Moore and ABII can argue to the Tribunal that their respective choice-of-Iran-court provision are not "binding", an argument that the United States will support. But, for Dames & Moore, resort to the Courts of Iran is not the "sole" remedy, a fact that the United States finds dispositive.

[6]The Dames & Moore contract clause is as follows:

> Any dispute or disagreement arising under this Contract shall first be discussed amicably by both parties. Failing agreement, such dispute or disagreement shall be submitted to conciliation. Each party shall have the right to appoint one conciliator and a third conciliator shall be appointed by the Plan and Budget Organization of the Government of Iran. In the event that either party is unwilling to accept the decision of the conciliation board, the matter shall be decided finally by resort to the courts of Iran.

Dames & Moore Petition for Writ of Certiorari, p. 7 n.2.

The nullification of attachments obviously has far different consequences for claimants who are excluded from the Tribunal than it does for claimants who can proceed before the Tribunal. If the President's actions are sustained, claimants who can proceed before the Tribunal will have a meaningful alternative remedy in place of their priority interests in particular assets. If Iran fulfills its obligation to replenish the billion dollar security account, claimants can receive full satisfaction of their claims, plus the ability to adjudicate the merits without regard for preliminary defenses (such as sovereign immunity) that might be available to Iran in U.S. courts. Even if Iran does not replenish the fund, claimants will receive at least partial compensation and will be entitled under the Claims Settlement Declaration to enforce Tribunal awards in the courts of any nation.

Claimants excluded from the Tribunal are left with a claim but no practical means to enforce a judgment. They have neither the benefits secured by their prior attachments nor access to the Tribunal. And a claimant who sought to enforce a judgment abroad might well find that the Declarations had created additional hurdles. A foreign court might, for example, decline to recognize the U.S. court judgment on the ground that the Declarations deprived the U.S. courts of jurisdiction over Iranian claims.

2. IEEPA

This is the first time in which a President – acting solely by virtue of his powers to freeze foreign assets – has sought to block assets, nullify property interests therein obtained through judicial process by U.S. claimants, and direct the return of blocked assets to a foreign state. Whatever may be the extent of the President's authority in cases in which he provides an alternative claims settlement remedy, petitioner respectfully submits that the President

has no authority under IEEPA when he provides no alternative remedy.

This Court has held that IEEPA's predecessor, the Trading with the Enemy Act, 50 U.S.C. App. §§1 *et seq.* (Supp. 1980) ("TWEA"), App. 25a, was designed to prevent the transfer of foreign assets in the United States to hostile foreign nations, to secure those assets for the benefit of American creditors, and to provide for an equitable method of distributing foreign assets among American creditors when such assets were insufficient to satisfy outstanding claims. *See Zittman v. McGrath,* 341 U.S. 471, 473-74 (1951); *Propper v. Clark,* 337 U.S. 472, 481, 484 (1949). It is at least arguable that for claimants who will have access to the Iran-U.S. Claims Tribunal, the statutory purposes of TWEA, as carried over in IEEPA, are being met. Clearly, however, the effect of the President's actions with respect to a claimant who will not have access to the Tribunal is contrary to these statutory purposes.

Indeed, the United States itself has recognized the importance of the Tribunal in defending the President's authority to suspend claims and nullify attachments. In its memorandum filed in this Court last week, the United States said:

> The First and District of Columbia Circuit opinions also amply sustain the power of the President to settle claims against Iran *by providing for arbitration of those claims,* particularly in the context of the grave international crisis resulting from the seizure of American hostages . . . . Hence the President has provided a reasonable and fully adequate means for resolving claims against Iran and, *consistent with the*

> *purposes of IEEPA,* has assured the presence of funds to pay arbitration awards out of the Iranian assets that were frozen on November 14, 1979.

Memorandum for Respondents, pp. 11-12, *Dames & Moore v. Regan,* No. 80-2078 (filed June 10, 1981) (emphasis added).

Similarly, in distinguishing the Iranian cases from *Zittman v. McGrath,* 341 U.S. 446 (1951), the D.C. Circuit in the *AIG* decision emphasized the availability of "meaningful relief" in the Tribunal. *AIG* at 38. The Circuit Court said:

> United States policy is perfectly consistent: it seeks to resolve a difficult foreign crisis and safeguard certain legitimate claims of Americans not by, as in *Zittman,* denying a forum, but by remitting the claimants to international arbitration. *AIG* at 22.

This petition calls upon the Court to define the extent of traditional presidential powers to freeze and deal with foreign assets in an international emergency in the light of expressed congressional dissatisfaction with the manner in which those powers have previously been exercised. Congress enacted IEEPA in 1977 specifically to curtail emergency powers previously exercised in peacetime by the President under TWEA. As relevant here, the most important restriction imposed on the President was the removal of the power to seize or vest foreign assets. IEEPA reenacts the President's peacetime emergency authority to freeze foreign assets, relied upon by President Carter on November 14, 1979, and again by President Reagan in nullifying attachments, but denies to the President the authority to seize or vest such assets except in wartime.

In upholding the President's peacetime authority to nullify attachments under IEEPA, the Courts of Appeals for the First and District of Columbia Circuits relied almost exclusively on *Orvis v. Brownell,* 345 U.S. 183 (1953), which dealt with the President's wartime powers under TWEA. The D.C. Circuit found *Orvis* controlling, reading it to hold "that the President, acting under [TWEA], may disregard judicial attachments obtained after foreign assets have been frozen." *AIG* at 20. *Accord Chas. T. Main International, Inc v. Khuzestan Water & Power Authority,* Nos. 80-1027, *et al.* (1st Cir. May 22, 1981) (typescript opinion) ("*Main*"). It distinguished an earlier decision of this Court, *Zittman v. McGrath,* 341 U.S. 446 (1951), which had upheld an attachment of enemy property that was later vested. The D.C. Circuit concluded: "The cases, taken together, therefore indicate that the Supreme Court, while willing to keep the attachments in effect to maintain a forum for the claimants, would not give the attachments any effect as against a federal interest." *AIG* at 22.

Both Courts of Appeals proceeded – in our view mistakenly – on the assumption that the powers at issue in *Orvis* and *Zittman* were the freezing powers. *Orvis* and *Zittman* are in fact cases about the nature of the property interests that can be acquired by vesting under TWEA. *Zittman* held that an attachment was valid despite a freeze order, both as against an enemy debtor and the Custodian seeking to vest the interest of the enemy debtor. *Orvis* reconfirmed the validity of a post-freeze attachment against the enemy debtor but permitted the Custodian to vest the property free of the attachment. *Orvis* does not in fact define the scope of the President's authority absent vesting, the issue before the Court now. And the First and D.C. Circuits would sanction presidential actions under

IEEPA that *Zittman* refused to sanction under the much broader power of TWEA.

To the extent *Orvis* and *Zittman* shed any light on the present situation, they suggest that the President has exceeded his powers at least with respect to his treatment of excluded claimants. This Court indicated in both *Zittman* and *Orvis* that the freeze alone did not operate to nullify claimants' interests in the foreign assets.[7] And in both cases, the U.S. claimant received some relief: in *Zittman* the attachment was upheld; in *Orvis,* although the attachment fell, the U.S. claimant could seek relief against the pool of frozen assets marshalled by the Custodian – the equivalent in this case of the Claims Tribunal.

3. Fifth Amendment

The nullification of petitioner's attachment constituted the taking of a property right for which there is no reasonably certain prospect of compensation. It was therefore an unlawful taking in violation of the Fifth Amendment. For claimants who will not have access to the Iran-U.S. Claims Tribunal, the Fifth Amendment issues are different than for claimants who will have access.

The availability of a meaningful alternative forum in which to seek relief is itself compensation for the nullification of an attachment. Claimants who will not have access to the Tribunal have no present prospect of compensation for the taking of their attachment absent a remedy in the Court of Claims.

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[7]This Court held in *Orvis* that:

> while [the freezing order] recognized attachment liens insofar as they determined relationships between creditor and enemy debtor, it did not permit the transfer of a property interest in the blocked funds which could be asserted against the Custodian. 345 U.S. at 186-87.

There is substantial question whether the Court of Claims is open to petitioner. That court has no jurisdiction over claims arising out of or dependent upon a treaty or executive agreement. 28 U.S.C. § 1502; *Hughes Aircraft Co. v. United States,* 534 F.2d 889, 903 (Ct. Cl., 1976). The United States does not concede that the Court of Claims has jurisdiction. U.S. Statement of Interest filed February 26, 1981, in the district court, at 21n.[8]

The Court of Appeals for the District of Columbia held that there was no taking because claimants could have no reasonable expectation that the license pursuant to which attachments were obtained would not be revoked. *AIG* at 42-45. The reasonable expectations that Petitioner had, however, were that its attachment would be good against Iran despite the freeze order, an expectation bottomed on *Orvis* and *Zittman,* and that Iranian assets would be applied equitably for the benefit of all U.S. claimants. President Carter announced on November 14, 1979, that he was freezing Iranian assets to protect American claimants. And in licensing judicial proceeding including attachments, the United States noted that licensing litigation:

---

[8]This Court can meet petitioner's Fifth Amendment issue by holding that the Court of Claims will have jurisdiction to compensate petitioner upon a finding that its property was taken. That holding, however, must be made in this case and not at some future time. *Cities Service Co. v. McGrath,* 342 U.S. 330 (1952); *see Regional Rail Reorganization Act Cases,* 419 U.S. 102 (1974). The *AIG* and *Main* courts held, with respect to the President's suspension of claims, that it was premature to consider the taking issue. *AIG* at 38; *Main* at 23. Those holdings are probably correct with respect to the suspension of claims because the district court can consider the taking issue if and when it is asked to dismiss. The nullification of an attachment, however, is final because there will be nothing left to attach in the future.

> serves several important purposes and is vitally related to the President (and his delegee's) purpose to protect those with lawful claims against Iran while preserving the President's flexibility to adopt an approach to satisfy claims in an orderly and equitable fashion. App. 16a.

The reasonable expectations of claimants who may proceed before the Claims Tribunal will, to some degree at least, be satisfied through the establishment of the Tribunal. The reasonable expectations of petitioner are wholly frustrated.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari to the Court of Appeals for the District of Columbia Circuit Before Judgment should be granted in petitioner's case,[9]

[9]If the Court does not choose to grant petitioner's writ at this time we respectfully request that the Court put the petition on "hold" status pending the Court's final disposition of *Dames & Moore*.

and the Order of the District Court entered June 11, 1981, should be reversed.

Respectfully submitted,

DAVID GINSBURG,
Counsel of Record,
LEE R. MARKS,
ALAN S. WEITZ,
SUSAN A. COBB,
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Dated: June 15, 1981

EXHIBIT A

PARENT COMPANIES AND AFFILIATES OF AMERICAN BELL INTERNATIONAL INC.

American Telephone and Telegraph Company
New York Telephone Company
American Telephone and Telegraph Company of Arkansas
American Telephone and Telegraph Company of Baltimore City
American Telephone and Telegraph Company of Delaware
The American Telephone and Telegraph Company of Illinois
American Telephone and Telegraph Company of Indiana, Inc.
American Telephone and Telegraph Company of Michigan
American Telephone and Telegraph Company of New Jersey
The American Telegraph and Telephone Company of Pennsylvania
American Telephone and Telegraph Company of Rhode Island
American Telephone and Telegraph Company of Virginia
The American Telephone and Telegraph Company of Wisconsin
American Telephone and Telegraph Company of Wyoming
Bell Telephone Company of Nevada
The Bell Telephone Company of Pennsylvania
Bell Telephone Laboratories, Incorporated

195 Broadway Corporation
The Champaign Telephone Company
The Chesapeake and Potomac Telephone Company
The Chesapeake and Potomac Telephone Company of Maryland
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
Cincinnati Bell, Inc.
Cuban American Telephone and Telegraph Company
The Diamond State Telephone Company
East Pittsburgh Telephone Company
Eastern Telephone and Telegraph Company (Canada)
Empire City Subway Company (Limited)
Illinois Bell Telephone Company
Indiana Bell Telephone Company, Incorporated
Malheur Home Telephone Company
Manufacturers' Junction Railway Company
Michigan Bell Telephone and Telegraph Company
Muberts Development Company
Nassau Recycle Corporation
New England Telephone and Telegraph Company
New Jersey Bell Telephone Company
Northwestern Bell Telephone Company
The Ohio Bell Telephone Company
The Ohio Telephone and Telegraph Company
Pacific Northwest Bell Telephone Company

The Pacific Telephone and Telegraph Company
Sandia Corporation
Southern Bell Telephone and Telegraph Company
South Central Bell Telephone Company
The Southern New England Telephone Company
Southwestern BEll Telephone Company
Southwestern Bell Telephone Company of Arkansas
Southwestern Bell Telephone Company (Oklahoma)
Teletype Corporation
Teletype International Sales Corporation
Texas Compensation Insurance Company
Transoceanic Cable Ship Company, Incorporated
Transoceanic Communications, Incorporated
Transpacific Communications, Incorporated
Western Electric Company, Incorporated
Western Electric Company, Limited (London)
Wisconsin Telephone Company
Arkansas Bell Telephone Company
Kansas Bell Telephone Company
Missouri Bell Telephone Company
Oklahoma Bell Telephone Company
Texas Bell Telephone Company
Texas Bell Communications
Southwestern Redevelopment Corporation
The AMPS Corporation
AT&T International, Inc.
Western Electric International, Inc.
AT&T International Far East, Limited

CERTIFICATE OF SERVICE

I certify that on June 15, 1981, I caused to be served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment and Appendix thereto by hand to:

The Honorable Rex Lee
Solicitor General
Department of Justice
Washington, DC 20536
for the United States

Abourezk, Shack & Mendenhall, P.C.
Suite 500
1129 - 20th Street, NW
Washington, D.C. 20036
for the Islamic Republic of Iran and the Ministry of Defense of the Islamic Republic of Iran, Respondents, and for the Islamic Republic of Iran, Intervenor in *Dames & Moore v. Regan,* No. 80-2078

and

Tuttle & Taylor Incorporated
Suite 805
1901 L Street, NW
Washington, DC 20036
for Dames & Moore, Petitioner in *Dames & Moore v. Regan,* No. 80-2078

and by overnight courier to:

C. Stephen Howard, Esq.
Tuttle & Taylor Incorporated
609 South Grand Avenue
Los Angeles, California 90017
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Petitioner in *Dames & Moore v. Regan*,
No. 80-2078

and

Leonard B. Boudin
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, P.C.
30 East 42nd Street
New York, NY 10017
for Bank Markazi Iran,
Intervenor in *Dames & Moore v. Regan*
No. 80-2078

/s/ Lee R. Marks

Lee R. Marks

No. 80-2111

JUN 15 1

ALEXANDER L. S
CLERK

IN THE

Supreme Court of the United States

October Term, 1980

AMERICAN BELL INTERNATIONAL INC.,
Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN AND THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT BEFORE JUDGMENT

DAVID GINSBURG,
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LEE R. MARKS,
ALAN S. WEITZ,
SUSAN A. COBB,
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Upon consideration of the United States' Statement of Interest, plaintiff's memorandum and supplemental memorandum, defendants' memorandum and supplemental memorandum and the United States' reply memorandum filed herein, and having heard oral argument on this date,

it is ORDERED this 11th day of June, 1981, that the writ of prejudgment attachment filed in Civil Action No. 80-321 on May 5, 1980 is vacated. The vacating of the writ of attachment is stayed for five business days, until the close of business on Thursday, June 18, 1981. If American Bell International Inc. petitions the United States Supreme Court for a writ of certiorari within that five day period, the stay will be continued until the final disposition of this action by the Supreme Court, by denial of certiorari or otherwise, or until July 15, 1981, whichever occurs first.

It is further ordered that this action be and hereby is stayed until further Order of this Court.

/s/ Gerhard A. Gesell
United States District Judge

Docket Notification Form, Filed June 11, 1981

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

U.S. District Court Civil No. 80-0321
U.S. Court of Appeals No. 81-1652
RE: *American Bell International* v. *Islamic Republic of Iran*

You are hereby notified that copies of the notice of appeal and docket entries in the above case were transmitted from the District Court and the appeal docketed in this Court on the above date, pursuant to Federal Rule of Appellate Procedure (FRAP) 12(a), as amended August 1, 1979. The appeal has been assigned the indicated docket number.

The record will be transmitted to this Court on or before_____and you will be notified. The time for filing appellant's brief will run from that date.

Your attention is directed to Rule 10, FRAP, as amended August 1, 1979 concerning the timetable for ordering preparation of any transcript.

Forms for the entry of appearance by counsel are enclosed. This should be accomplished at once.

Very truly yours,

/s/GEORGE A. FISHER
Clerk

NOTICE OF APPEAL

Filed and entered June 11, 1981 in the United States District Court for the District of Columbia

Notice is hereby given this 11th day of June, 1981, that American Bell International Inc.

hereby appeals to the United States Court of Appeals for the District of Columbia from the Order of this Court, vacating plaintiff's attachment, which was entered on the 11th day of June, 1981

in favor of defendants

against said plaintiff, American Bell International Inc.

David Ginsburg, Lee R. Marks, Alan S. Weitz,
Susan A. Cobb, James F. Wallack, GINSBURG,
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CLERK: Please mail copies of the above Notice of Appeal to the following at the addreses indicated:

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Partial Transcript of Proceedings Before The Honorable Gerhard A. Gesell, United States District Judge, June 11, 1981

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AMERICAN BELL INTERNATIONAL, INC., Plaintiff	
v.	Civil Action No. 80-321
ISLAMIC REPUBLIC OF IRAN and THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN, Defendants	

Washington, D.C.
June 11, 1981

The above-entitled cause came on for Hearing on Motions before THE HONORABLE GERHARD A. GESELL, United States District Judge, at 9:30 a.m.

APPEARANCES:

LEE R. MARKS, Esq.,
ALAN S. WEITZ, Esq.,
SUSAN A. COBB, Esq.,
JAMES F. WALLACK, Esq.,
Of: GINSBURG, FELDMAN, WEIL and BRESS,
FRANK M. STEADMAN, Jr., Esq.,
Counsel for Plaintiff

CHRISTINE COOK NETTESHEIM, Esq.,
JOHN B. BEATY, Esq.,
Of: ABOUREZK, SHACK & MENDENHALL,
Counsel for Defendants

IDA Z. WATSON
Official Reporter
U.S. Court House
Washington, D.C.

COPY FOR:
MR. MARKS

APPEARANCES:

DAVID J. ANDERSON,
THEODORE C. HIRT, Esq.,
ANGELA M. SOUSA, Esq.,
Department of Justice,
Counsel for Government

Proceedings

THE COURT: Good Morning.

THE CLERK: Civil Action No. 80-321, American Bell International, Inc. v. Islamic Republic of Iran, et al.

* * *

[3] THE COURT: I am conscious of the time factors that confront me here; and I do want to say to the parties that I have spent a great deal of time reading these other opinions and reading the able briefs of counsel and trying to keep up with what is going on.

I think it would be in the interests of both parties to rule now very simply.

I would like to say that I feel this issue is one that should and can conveniently be joined with the other issues that are approaching the Supreme Court in order that there can be an over-all resolution.

Contrary to the arguments of Plaintiff, the Court feels the case is controlled by the Court of Appeals decision in American International Group. I take not as dictum but as holding the statement of our Court of Appeals that:

> "The President's power to revoke the attachments does not depend upon the ability of the parties to seek relief from the Claims Tribunal."

[4] I read the opinion as an opinion that made that a formal holding, essential to the discussion of the whole remand problem.

I also believe that in any event the analysis is squarely in point that IEEPA, which is the source, and the implemen-

ting regulations gave only a conditional right to attach, a license, if you will; and that the Government had, as it has done, the power to withdraw that license. Therefore, there was no expectation of permanency in the attachment.

It may well be that this case will prove not to be a denial of forum case but there is no way that the Court can determine what the result will be when the United States and Plaintiff seek to have this matter arbitrated.

If it is not subject to arbitration and that should prove to be the case, then there will be many more matters to be considered here.

I do not intend, for example, to deal with the Cities Service issue that was mentioned by Mr. Marks, or with the whole question of whether or not there is or is not a taking here.

What I am going to do is to enter an order simply lifting the attachment and suspending the further proceedings in this case pending developments.

[5] I will stay my order for a period of five days to enable Plaintiff to pursue remedies in higher courts.

What I suggest is that counsel prepare a simple one-page order to that effect and submit it to me today, so this matter can proceed.

I will watch developments with interest.

MR. MARKS: Your Honor —

THE COURT: Yes.

MR. MARKS: As to the stay for five days, if within five days we should seek relief in the Supreme Court, I assume Your Honor would be prepared to extend the stay because there is no way the matter can be resolved within five days.

THE COURT: I think you are entitled to some kind of a stay of my order until we know whether the Supreme Court is going to take the case or not. If they are going to take it, that will, in itself, stay the case.

MR. MARKS: Could we, Your Honor, have a stay for, say, five days, assuming that we file a petition for cert. and thereafter until the petition for cert. is disposed of?

THE COURT: Yes.

MR. MARKS: Thank you, Your Honor.

THE COURT: That is really what I intended to say. I see no problem with that. Do you, Mr. Anderson?

MR. ANDERSON: No, no objection.

MR. MARKS: Thank you, Your Honor.

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on June 11, 1981 and that the foregoing Pages 1 to 5, inclusive, constitute the official transcript of the Court's Ruling.

/s/Ida Z. Watson

Partial Transcript of Proceedings Before The Honorable Gerhard A. Gesell, United States District Judge, April 15, 1981

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AMERICAN BELL INTERNATIONAL, INC.,	:	
Plaintiff	:	
v.	:	
	:	Civil Action
	:	No. 80-321
ISLAMIC REPUBLIC OF IRAN, et al.,	:	
Defendants	:	

Washington, D.C.
April 15, 1981

The above-entitled cause came on for Hearing on Plaintiff's Motion before THE HONORALE GERHARD A. GESELL, United States District Judge, at 2:30 p.m.

APPEARANCES:

ALAN S. WEITZ, Esq.,
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Counsel for Defendants

ANGELA M. SOUSA, Esq.,
Department of Justice,
Counsel for Government

IDA Z. WATSON
OFFICIAL Reporter
U.S. Court House
Washington, D.C.

COPY FOR:
Mr. Weitz

PROCEEDINGS

THE CLERK: Civil Action No. 80-321, American Bell International, Inc. v. Islamic Republic of Iran, et al.

* * *

[19] THE COURT: What is your position about this claim before the Tribunal?

MS. NETTESHEIM: That any issue as to whether this claim is or is not arbitrable – the United States said it is going to argue that it should be decided by the Tribunal.

That is our position.

THE COURT: That isn't your position. What position will the Government of Iran take on that issue?

MS. NETTESHEIM: At this point, Your Honor, I have not received instructions that, despite the urgings of the United States, the Government of Iran will abandon the language of the Declaration.

THE COURT: I am not talking about that.

Now you are really toying with me.

MS. NETTESHEIM: Excuse me, I didn't mean to.

THE COURT: The Tribunal will determine its jurisdiction. The question is not that. The question is: What will you urge before the Tribunal?

MS. NETTESHEIM: Your Honor –

THE COURT: That isn't abandoning any position. That is a position that you can take now just as well as you can take it six months from now.

MS. NETTESHEIM: I believe, if I understand correctly, what Your Honor is asking me is whether or not Iran will take a position that Article II, Paragraph 1, in so far as it reiterates the so-called modulus [sic] position is binding.

Iran will only take – and has instructed me to so advise the Court – positions as to arbitrability of claims in front of the Tribunal. I am not authorized to state what they will argue now.

THE COURT: That is what it comes down to. You don't know and you have no authority to say so.

MS. NETTESHEIM: That is right, Your Honor.

* * *

[25] THE COURT: Let me ask you one final question.

You say you have not been instructed. Did you ask to be instructed when this motion was filed?

MS. NETTESHEIM: No, Your Honor, I did not. I received a previous instruction that covered – when we read the United States' statement, which was filed over a month ago, we knew we would be getting motions like this. At that time a dialogue ensued and we were told not to address the issues.

THE COURT: Iran wouldn't give you any answer about anything except to say, go to the Tribunal.

That is it, right?

But they gave you an answer in the case before this. Now how does that work?

It seems to me you conveniently have answers when they help you and you conveniently don't when it helps you.

MS. NETTESHEIM: Your Honor, I see consistency in both cases.

THE COURT: How are you able to get them to say it in one case and not in another?

MS. NETTESHEIM: In both cases, all they have said is: Questions dealing with the jurisdiction of the Tribunal should be referred to the Tribunal.

* * *

[40] MR. WEITZ: Your Honor, I am sorry to interrupt.

Would we expect an order from you on today's hearing or would you rather hear from us first in terms of a report?

THE COURT: I can give you an order on today's hearing on your motion.

MR. WEITZ: Maybe I would rather not hear it.

THE COURT: I indicated how I came out.

I don't believe I have the authority to direct the Government of Iran to tell me what position they are going to take about your case before the Tribunal. I don't think I have the power to do it.

I also think they wouldn't pay any attention to it if I did order it.

So, given the lack of cooperation, which is not unexpected, I am not surprised we are just in a stalemate situation.

[41] I think their position is tactical and will remain tactical. One of the things I learned fairly early as a judge, is not to enter orders that you can't carry out; and I don't think I can carry it out.

That is my practical view of it. So that results in denial of your application.

I will be glad to enter an order to that effect if you want me to.

MR. WEITZ: The ruling is sufficient.

I think our next step, as I indicated, is to report back to the Court as to whether we want to pursue it here or to the Tribunal.

THE COURT: Right.

MR. WEITZ: Thank you.

THE COURT: All right.

(Whereupon the hearing was concluded.)

* * *

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on April 15, 1981 and that the foregoing Pages 1 to 3, inclusive, constitute the partial official transcript.

/s/Ida Z. Watson

Plaintiff's Motion to Require Defendants to State Their Position on Arbitrability and For a Stay Pending Such Statement Filed March 18, 1981 in United States District Court for the District of Columbia

Plaintiff American Bell International Inc. ("ABII") moves for an order (1) requiring defendants to represent to this Court whether they regard plaintiff's claim as arbitrable before the Iran-United States Claims Tribunal ("Tribunal") and will so concede before the Tribunal, and (2) staying further briefing of the pending motions to quash pre-judgment attachment and of the issues raised by the United States Statement of Interest until defendants make their position known to this Court.

The grounds for this motion, set forth more fully in the accompanying memorandum, are as follows:

1. The pending motions to quash plaintiff's prejudgment attachment and the Statement of Interest filed by the United States on February 26, 1981, raise difficult constitutional and other issues. The Statement of Interest provides a means, however, by which this matter may be resolved by agreement of the parties without need to reach these issues.

2. In its Statement of Interest, the United States takes the position that the Tribunal should find that it has jurisdiction over claims of the kind presented in this case. The Government states that it will support the effort by such claimants to have their claims heard by the Tribunal, and it urges the courts to require Iranian defendants to take a position on the arbitrability of such claims (pp. 24-25).

3. In reliance on the Government's undertakings, plaintiff is prepared to vacate the attachment if defendants were to agree with the Government that plaintiff's claim can be heard by the Tribunal and would so concede before

the Tribunal. Defendants' representation to this Court could thus eliminate the need to adjudicate the issues now pending.

4. Because defendants' position may moot all pending issues, further briefing on the attachment should be stayed until defendants declare their position.

Respectfully submitted,

/s/Lee R. Marks

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Lee R. Marks,
Alan S. Weitz,

GINSBURG, FELDMAN,
WEIL AND BRESS
Suite 300
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 637-9000

Attorneys for Petitioner,

Dated: March 18, 1981

Memorandum of the United States in Connection with the United States' Suggestion of Interest Requesting That This Court Stay Proceedings, p. 8, n. 5, Filed August 13, 1980, in the United States District Court For the District of Columbia

* * *

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[5]535.504 Specifically grants a license for initiating judicial proceedings, while withholding a license for a "judgment or of any decree or order of similar or analogous effect." This distinction serves several important purposes and is vitally related to the President (and his delegee's) purpose to protect those with lawful claims against Iran while preserving the President's flexibility to adopt an approach to satisfy claims in an orderly and equitable fashion. Permitting claims to go forward permits claimants to avoid problems of statute of limitations, and may provide a vehicle for preserving critical evidence necessary to establish claims, whether they are finally resolved through subsequent licensing of judgments, resolution through an administrative claims process, or otherwise. Similarly, permitting the filing of suits puts Iran on notice of claims for which it may be held liable and thus serves to promote efforts to secure satisfactory protection of claimants' interest. At the same time withholding license for judgments helps assure that the President maintains the flexibility to determine an orderly method of resolving legitimate claims that assures equity among claimants and provides maximum protection for creditors consistent with the President's on-going efforts to secure the hostages' release.

The approach works no unfairness on the litigants. The United States' consent to permit the litigation to go forward, expressed in the general license granted by 535.504, has always been expressly conditioned on the withholding of a license for judgments. To interpret the regulation to permit creation or extinguishing of interests in property through, *e.g.*, summary judgment on liability or on motions to dismiss with prejudice "would ignore the express conditions on which the consent was extended." *Orvis v. Brownell*, 345 U.S. 183, 187 (1953). See also *Propper v. Clark*, 33 U.S. 472, 485 (1949), where the Court recognized that the United States might permit litigation to go forward under the TWEA, while limiting the rights obtainable through litigation.

CONSTITUTION OF THE UNITED STATES

* * *

Article I

* * *

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes;

* * *

To constitute Tribunals inferior to the Supreme Court;

* * *

Article II.

* * *

Section. 2. The President . . .

. . . shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors . . .

Section. 3. [H]e shall receive Ambassadors and other public Ministers;

* * *

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*

§ 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

§ 1702. Presidential authorities

(a)(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise —

(A) investigate, regulate, or prohibit —

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly —

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

§ 1703. Consultation and reports — Consultation with Congress

(a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this chapter and shall consult regularly with the Congress so long as such authorities are exercised.

Report to Congress upon exercise of Presidential authorities

(b) Whenever the President exercises any of the authorities granted by this chapter, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which

has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

Periodic follow-up reports

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) of this section with respect to an exercise of authorities under this chapter, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b) of this section.

Supplemental requirements

(d) The requirements of this section are supplemental to those contained in Title IV of the National Emergencies Act.

§ 1704. Authority to issue regulations

The President may issue regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter.

§ 1705. Penalties

(a) A civil penalty of not to exceed $10,000 may be

imposed on any person who violates any license, order, or regulation issued under this chapter.

(b) Whoever willfully violates any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

§ 1706. Savings provisions — Termination of national emergencies pursuant to National Emergencies Act

(a)(1) Except as provided in subsection (b) of this section, notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this chapter, any authorities granted by this chapter, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(1) Notwithstanding the termination of the authorities described in section 1010(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

Congressional termination of national emergencies by concurrent resolution

(b) The authorities described in subsection (a)(1) of this section may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

Supplemental savings provisions; supersedure of inconsistent provisions

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

Periodic reports to Congress

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

Trading With the Enemy Act
50 U.S.C. App. §§ 1 et seq.

§ 5. Suspension of provisions relating to ally of enemy; regulation of transactions in foreign exchange of gold or silver, property transfers, vested interests, enforcement and penalties

(a) The President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act [sections 1-6, 7-39 and 41-44 of this Appendix] so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof [section 4(a) of this Appendix], and to perform any act made unlawful without such license in section three hereof [section 3 of this Appendix], and to file and prosecute applications under subsection (b) of section ten hereof [section 10(b) of this Appendix]; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act [sections 1-6, 7-39 and 41-44 of this Appendix]; and the President may exercise any power or authority conferred by this Act [said sections] through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof [section 3 of this Appendix] he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) (1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise —

> (A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and
>
> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the

benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however,* That the forego-

ing shall not be construed as a limitation upon the power of the President, which is hereby conferred to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

§ 9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover; sale of claimed property in time of war or during national emergency

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United Statess, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any

right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or it the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the United States District Court for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United Staets, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act [sections 1-6, 7-39 and 41-44 of this Appendix], and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated: *Provided further,* That upon a determination made by the President, in time of war or during any national emergency declared by the President, that the interest and welfare of the United States require the sale of any property or interest or any part thereof claimed in any suit filed under this subsection and pending on or after the

date of enactment [Oct. 22, 1962] of this proviso the Alien Property Custodian or any successor officer, or agency may sell such property or interest or part thereof, in conformity with law applicable to sales of property by him, at any time prior to the entry of final judgment in such suit. No such sale shall be made until thirty days have passed after the publication of notice in the Federal Register of the intention to sell. The net proceeds of any such sale shall be deposited in a special account established in the Treasury, and shall be held in trust by the Secretary of the Treasury pending the entry of final judgment in such suit. Any recovery of any claimant in any such suit in respect of the property or interest or part thereof so sold shall be satisfied from the net proceeds of such sale unless such claimant, within sixty days after receipt of notice of the amount of net proceeds of sale serves upn the Alien Property Custodian, or any successor officer or agency, and files with the court an election to waive all claims to the net proceeds, or any part therof, and to claim just compensation instead. If the court finds that the claimant has established an interest, right, or title in any property in respect of which such an election has been served and filed, it shall proceed to determine the amount which will constitute just compensation for such interest, right, or title, and shall order payment to the claimant of the amount so determined. An order for the payment of just compensation hereunder shall be a judgment against the United States and shall be payable first from the net proceeds of the sale in an amount not to exceed the amount the claimant would have received had he elected to accept his proportionate part of the net proceeds of the sale, and the balance, if any, shall be payable in the same manner as are judgments in cases arising under section 1346 of Title 28. The Alien Property Custodian or any successor officer or agency shall, immediately upon the entry of final judgment,

notify the Secretary of the Treasury of the determination by final judgment of the claimant's interest and right to the proportionate part of the net proceeds from the sale, and the final determination by judgment of the amount of just compensation in the event the claimant has elected to recover just compensation for the interest in the property he claimed.

§ 34. Payment of debts

(a) Claims allowable; defenses

Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act [sections 1-6, 7-39 and 41-44 of this Appendix] and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this Act [said sections], as amended, sections 1-6 of the Criminal Code, title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940

(ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act; and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

28 U.S.C. § 1254.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. § 1292.

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

28 U.S.C. § 1330.

§ 1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.

28 U.S.C. § 1331.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.

28 U.S.C. 1391.

§ 1391. Venue generally

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose.

(b) A civil action where jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

(d) An alien may be sued in any district.

(e) A civil action which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought —

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

28 U.S.C. § 1502.

Except as otherwise provided by Act of Congress, the Court of Claims shall not have jurisdiction of any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations.

Foreign Sovereign Immunities Act of 1976 28 U.S.C. §§ 1602 *et seq.*

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activites are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

§ 1603. Definitions

For purposes of this chapter —

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity —

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (d) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the Untied States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case —

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activitiy carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to —

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That —

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person,

or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit — unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in subsection (b)(1) of this section or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided*, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission

occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim —

(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a trans-

lation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services — and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance

with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state —

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made —

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the

foreign state or political subdivision in the manner prescribed for service in this section.

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property —

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consist of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act if —

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if —

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if —

(1) the property is that a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

Arms Export Control Act
22 U.S.C. §§ 2751, et seq.

§ 2762. Procurement for cash sales

Dependable undertaking by foreign country or international organization; interest rates

(a) Except as otherwise provided in this section, the President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract, and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

Issuance of letters of offer under emergency determination; availability of appropriations for payment

(b) The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this chapter. Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold.

Applicability of Renegotiation Act of 1951

(c) The provisions of the Renegotiation Act of 1951 do not apply to contracts for the procurement of defense articles and defense services heretofore or hereafter entered into under this section or predecessor provisions of law.

Executive Order 12170 of November 14, 1979

Blocking Iranian Government Property

Pursuant to the authority vested in me as President by the Constitution and laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. sec. 1601 *et seq.*, and 3 U.S.C. sec. 301,

I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

/s/ Jimmy Carter

THE WHITE HOUSE,
November 14, 1979.

Executive Order 12205 of April 7, 1980

Prohibiting Certain Transactions With Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in order to take steps additional to those set forth in Executive Order No. 121 70 of November 14, 1979, to deal with the threat to the national security, foreign policy and economy of the United States referred to in that Order, and in furtherance of the objectives of United Nations Security Council Resolution 461 (1979) adopted on December 31, 1979, it is hereby ordered as follows:

1-101. The following are prohibited effective immediately, notwithstanding any contracts entered into or licenses granted before the date of this Order:

(a) The sale, supply or other transfer, by any person subject to the jurisdiction of the United States, of any items, commodities or products, except food, medicine and supplies intended strictly for medical purposes, and donations of clothing intended to be used to relieve human suffering, from the United States, or from any foreign country, whether or not originating in the United States, either to or destined for Iran, an Iranian governmental entity in Iran, any other person or body in Iran or any other person or body for the purposes of any enterprise carried on in Iran.

(b) The shipment by vessel, aircraft, railway or other land transport of United States registration or owned by or

under charter to any person subject to the jurisdiction of the United Statse or the carriage (whether or not in bond) by land transport facilities across the United States of any of the items, commodities and products covered by paragraph (a) of this section which are consigned to or destined for Iran, an Iranian governmental entity or any person or body in Iran, or to any enterprise carried on in Iran.

(c) The shipment from the United States of any of the items, products and commodities covered by paragraph (a) of this section on vessels or aircraft registered in Iran.

(d) The following acts, when committed by any person subject to the jurisdiction of the United States in connection with any transaction involving Iran, an Iranian governmental entity, an enterprise controlled by Iran or an Iranian governmental entity, or any person in Iran:

(i) Making available any new credits or loans;

(ii) Making available any new deposit facilities or allowing substantial increases in non-dollar deposits which exist as of the date of this Order;

(iii) Allowing more favorable terms of payment than are customarily used in international commercial transactions; or

(iv) Failing to act in a businesslike manner in exercising any rights when payments due on existing credits or loans are not made in a timely manner.

(e) The engaging by any person subject to the jurisdiction of the United States in any service contract in support of an industrial project in Iran, except any such contract entered into prior to the date of this Order or concerned with medical care.

(f) The engaging by any person subject to the jurisdiction of the United States in any transaction which evades or avoids, or has the purpose or effect of evading or avoiding, any of the prohibitions set forth in this section.

1-102. The prohibitions in section 1-101 above shall not apply to transactions by any person subject to the jurisdiction of the United States which is a non-banking association, corporation, or other organization organized and doing business under the laws of any foreign country.

1-103. The Secretary of the Treasury is delegated, and authorized to exercise, all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order. The Secretary may redelegate any of these functions to other officers and agencies of the Federal government.

1-104. The Secretary of the Treasury shall ensure that actions taken pursuant to this Order and Executive Order No. 12170 are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

1-105. This Order is effective immediately. In accord with Section 401 of the National Emergencies Act (50 U.S.C. 1641) and Section 204 of the International Emergency nomic Powers Act (50 U.S.C. 1703), it shall be immediately transmitted to the Congress and published in the Federal Register.

/s/ Jimmy Carter

THE WHITE HOUSE
April 7, 1980.

Executive Order 12211 of April 17, 1980
The President: Further Prohibition on Transactions With Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, section 1732 and 2656 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in order to take steps additional to those set forth in Executive Order No. 12170 of November 14, 1979, and Executive Order No. 12205 of April 7, 1980, to deal with the threat to the national security, foreign policy and economy of the United States created by subsequent events in Iran and neighboring countries, including the Soviet invasion of Afghanistan, with respect to which I hereby declare a national emergency, and to carry out the policy of the United States to deny the use of its resources to aid, encourage or give sanctuary to those persons involved in directing, supporting or participating in acts of international terrorism, it is hereby ordered as follows:

1-101. Paragraph 1-101(d) of Executive Order No. 12205 is hereby amended by the addition of a new subparagraph (v) as follows:

(v) Make any payment, transfer of credit, or other transfer of funds or other property or interests therein, except for purposes of family remittances.

1-102. The following transactions are prohibited, notwhithstanding any contracts entered into or licenses granted before the date of this Order.

(a) Effective immediately, the direct or indirect import

from Iran into the United States of Iranian goods or services other than materials imported for news publication or news broadcast dissemination.

(b) Effective immediately, any transactions with a foreign person or foreign entity by any citizen or permanent resident of the United States relating to that person's travel to Iran after the date of this Order.

(c) Effective seven days from the date of this Order, the payment by or on behalf of any citizen or permanent resident of the United States who is within Iran of any expenses for transactions within Iran.

The prohibitions in paragraphs (b) and (c) of this section shall not apply to a person who is also a citizen of Iran and those prohibitions and the prohibitions in section 1-101 shall not apply to a journalist or other person who is regularly employed by a news gathering or transmitting organization and who travels to Iran or is within Iran for the purpose of gathering or transmitting news, making news or documentary films, or similar activities.

1-103. The Secretary of the Treasury is hereby directed, effective fourteen days from the date of this Order, to revoke existing licenses for transactions by persons subject to the jurisdiction of the United States with Iran Air, the National Iranian Oil Company, and the National Iranian Gas Company previously issued pursuant to regulations under Executive Order No. 12170 or Executive Order No. 12205.

1-104. The Secretary of the Treasury is delegated, and authorized to exercise, all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to car out the purposes of this Order. The Secretary may redelegate any of these functions to others officers and agencies of the Federal government.

1-105. The Secretary of the Treasury shall ensure that actions taken by him pursuant to the above provisions of this Order, Executive Order No. 12170 and Executive Order No. 12205 are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

1-106. The Secretary of State is delegated, and authorized to exercise in furtherance of the purposes of this Order the powers vested in the President by Section 2001 of the Revised Statutes (22 U.S.C. 1732), Section 1 of the Act of July 3, 1926 (22 U.S.C. 211a), and Section 215 of the Immigration and Nationality Act (8 U.S.C. 1185), with respect to:

(a) the restriction of the use of United States passports for travel to, in or through Iran; and

(b) the regulation of departures from and entry into the United States in connection with travel to Iran by citizens and permanent residents of the United States.

1-107. Except as otherwise indicated herein, this Order is effective immediately. In accord with Section 410 of the National Emergencies Act (50 U.S.C. 1641) and Section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703), it shall be immediately transmitted to the Congress and published in the Federal Register.

/s/ Jimmy Carter
JIMMY CARTER

THE WHITE HOUSE
April 17, 1980

Executive Order 12277 of January 19, 1981
Direction To Transfer Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the Internatinal Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of the Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United Staets upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of the U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order.

1-101. The Federal Reserve Bank of New York is licensed, authorized, directed, and compelled to transfer to accounts at the Bank of England, and subsequently to transfer to accounts at the Bank of England established pursuant to an escrow agreement approved by the

Secretary of the Treasury, all gold bullion, and other assets (or the equivalent thereof) in its custody, of the Government of Iran, or its agencies, instrumentalities or controlled entities. Such transfers shall be executed when and in the manner directed by the Secretary of the Treasury. The Secretary of the Treasury is also authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York to engage in whatever further transactions he deems appropriate and consistent with the purposes of this Order, including any transactions related to the return of such bullion and other assets pursuant to the escrow agreement.

1-102 (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injuction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or other-

wise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of his Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE
January 19, 1981

Executive Order 12279 of January 19, 1981.

Direction To Transfer Iranian Government Assets Held by Domestic Banks.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 22 of the United States Code, Section 1732 of 3 Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order.

1-101. Any branch or office of a banking institution subject to the jurisdiction of the United States, which branch or office is located within the United States and is, on the effective date, either (a) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) carrying on its books deposits standing to the credit of or

beneficially owned by such Government, agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entrities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege whether by court order or otherwise, with respect to the properties (and any income thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in section 1-101 of this

Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No persons shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act [50 U.S.C. 1701 *et seq.*] to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE

January 19, 1981.

/s/ Jimmy Carter

Executive Order 12280 of January 19, 1981.

Direction To Transfer Iranian Government Financial Assets Held by Non-Banking Institutions.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act [50 U.S.C. 1702], Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act [50 U.S.C. 1631], in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any person subject to the jurisdiction of the United States which is not a banking institution and is on the effective date in possession or control of funds or securities of Iran or its agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank

of New York to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with the Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done

or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of an all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act [50 U.S.C. 1701 *et seq.*] to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE.

January 19, 1981.

/s/ Jimmy Carter

Executive Order 12281 of January 19, 1981.

Direction To Transfer Certain Iranian Government Assets.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. All persons subject to the jurisdiction of the United States in possession or control of properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities are licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent.

Except where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be

a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

/s/ Jimmy Carter

Executive Order 12294 of February 24, 1981.

Suspension of Litigation Against Iran.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which were based the declarations of national emergency in Executive Order No. 12170, issued November 14, 1979, and in Executive Order No. 12211, issued April 17, 1980, in light of the agreement with the Government of Iran, as reflected in the Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of United States diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, in order to implement Article II of the Declaration of Algeria concerning the settlement of claims and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except

as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

Section 2. Nothing in this Order shall require dismissal of any action for want of prosecution.

Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

Section 5. Nothing in this Order shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

Section 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced

by the Government of Iran, any political subdivision of Iran, any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

Section 7. The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act and by 22 U.S.C. § 1732 to carry out the purposes of this Order.

Section 8. Executive Order Nos. 12276 through 12285 of January 19, 1981, are ratified.

This Order shall be effective immediately and copies shall be transmitted to the Congress.

THE WHITE HOUSE,
February 24, 1981.

/s/ Ronald Reagan

Department of the Treasury Office of Foreign Assets Control Iranian Assets Control Regulations

§ 535.213 Direction involving property held by offices of banks in the U.S. in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either (1) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or (2) carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

5. Section § 535.214 is added as follows:

§ 535.214 Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred

as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order) as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

6. Section 535.215 is added as follows:

§ 535.215 Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

All persons subject to the jurisdiction of the United States in possession or control of properties, as defined in § 535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities are licensed, authorized, directed and compelled to transfer such properties held on January 19, 1981 as directed after that date by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

§ 535.218 Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(a) All licenses and authorizations for acquiring or exercising any right, power or privilege, by court order,

attachment or otherwise, including the license contained in § 535.504, with respect to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 are revoked and withdrawn.

(b) All rights, powers and privileges relating to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979 at 8:10 a.m. e.s.t., including those derived from § 535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege, whether by court order or otherwise, with respect to property (and any income earned thereon) referred to in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(d) The prohibitions contained in paragraph (c) of this section shall not apply to Iran, its agencies, instrumentalities or controlled entities.

(e) This section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981 and which do not relate to litigation. Such licenses are revoked as of April 15, 1981, unless extended by further general or specific license.

§ 535.221 Compliance with directive provisions.

(a) Compliance with the directive provisions of §§ 535.213 and 535.214 requires that persons affected by these sections shall implement the directives as soon as reasonably practicable.

(b) Until the Secretary of the Treasury determines that the authority of the United States to order these transfers has been the subject of a definitive legal ruling the United States Government will not seek to impose civil or criminal sanctions on any party who does not make the transfers required by §§ 535.213, 535.214 and 535.215 and Executive Orders 12279-81 of January 19, 1981.

(c) Transfers of deposits or funds required by §§ 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following account: Federal Reserve Bank of New York as fiscal agent of the United States, Special Deposit Account.

(d) Securities to be transferred as required by §§ 535.213 and 535.214 of this part must be delivered to the Federal Reserve Bank of New York in fully transferable form, accompanied by all necessary transfer documentation, *e.g.*, stock or bond powers, powers of attorney, and also accompanied by instructions to deposit such securities to the following account: Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve BAnk of New York for credit to the account named in paragraph (d) of this section.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department.

(e) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have it placed in registered form in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(f) Securities in which Iran or an Iranian entity has an interest that are held in the name of a nominee must be re-registered in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(g) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (d) shall provide the Bank at leat two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book entry form.

§ 535.222 Suspension of claims eligible for Claims Tribunal.

(a) All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court in the United States, including the courts of any state and any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this section.

(b) Nothing in paragraph (a) of this section shall prohibit the assertion of a defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

(c) Nothing in this section precludes the commencement of an action after the effective date of this section for the purpose of tolling the period of limitations for commencement of such action.

(d) Nothing in this section shall require dismissal of any action for want of prosecution.

(e) Suspension under this section of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the

Tribunal that it does not have jurisdiction over such claim or portion thereof.

(f) A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim or part thereof shall operate as a final resolution and discharge of such claim or part thereof for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim or part thereof in a specified amount shall operate as a final resolution and discharge of such claim or part thereof for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

(h) The effective date of this section is February 24, 1981.

§ 535.418 Authorization of judicial proceedings under § 535.504.

The general authorization for judicial proceedings contained in § 535.504(a) includes pre-judgment attachment. However, § 535.504(a) does not authorize payment or delivery of any blocked property to any court, marshall, sheriff, or similar entity, and any such transfer of blocked property is prohibited without a specific license. It would not be consistent with licensing policy to issue such a license.

(44 Fed. Reg. 75353, removed effective January 19, 1981, 46 Fed. Reg. 14337)

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section and § 535.222, judicial proceedings are authorized with respect to property in which on or after 8:10 a.m., e.s.t., November 14, 1979, there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) Any pre-judgment attachment or any other proceeding of similar or analogous effect pertaining to any property (an any income earned thereon) subject to the provisions of § 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981, including, but no limited to, a temporary restraining order or preliminary injunction, which operates as a restraint on property, for purposes of holding it within the jurisdiction of a court, or otherwise:

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, pertaining to any property subject to the provisions of § 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981:

(c) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

(a), (b) and (c) of Section 535.504 were issued as new subsections on November 23, 1979. 44 Fed. Reg. 67617 (November 26, 1979). *Subsection (d)* was issued as a new subsection on November 29, 1979. 44 Fed. Reg. 69650 (December 4, 1979).

Section 535.504 was revised effective Jan 19, 1981. 46 F.R. 14330, 14336 (Feb. 26, 1981).

§ 535.579 Authorization of new transactions concerning certain Iranian property.

(a) Transactions involving property in which Iran or an Iranian entity has an interest are unauthorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person subject to the jurisdiction of the United States after January 19, 1981, or

(2) The interest in the property of Iran or an Iranian entity (e.g. exports consigned to Iran or an Iranian entity) arises after January 19, 1981.

(b) Transactions involving standby letters of credit, performance or payment bonds and similar obligations, entered into prior to January 20, 1981, described in § 535.568 remain subject to the prohibitions and procedures contained in §§ 535.201 and 535.568.

(c) Property not blocked under § 535.201 as of January 19, 1981, in which the Government of Iran or an Iranian entity has an interest, which after that date is or becomes subject to the jurisdiction of the United States or comes within the control or possession of a persons subject to the jurisdiction of the United States for the express purpose of settling claims against Iran or Iranian entities, is excluded from any authorization in this part for any attachment, injunction or other order of similar or analogous effect and any such attachment, injunction or order is prohibited by §§ 535.201 and 535.203.

§ 535.805 Amendment, Modification, or Revocation

The provision of this part and any rulings, licenses, authorizations, instructions, orders, or forms issued thereunder may be amended, modified, or revoked at any time.

For Immediate Release

Treasury Amends Regulations to Require Transfer of Iranian Bank Deposits

Thursday, June 4, 1981

The Department of the Treasury announced today that it has delivered to the *Federal Register* for publication amendments to the Iranian Assets Control Regulations requiring the transfer of bank deposits and certain other financial assets of Iran in the United States to the Federal Reserve Bank of New York by noon, June 19. The amendments will facilitate implementation of the Iran-U.S. agreements of January 19, 1981, which call for the transfer of the deposits abroad by July 19. According to the agreements, half of the deposits (up to $1 billion) are to be set aside in a Security Account to pay awards against Iran by the Iran-U.S. Claims Tribunal to U.S. claimants. The balance will go to Iran.

Treasury estimates the principal amount of the bank deposits to be about $2.08 billion. Although the exact amount of interest will not be known until the transfers are made, Treasury believes that the amount of interest should exceed $250 million.

The Treasury announcement follows major decisions in the Federal Courts of Appeal in two circuits upholding the President's power to nullify attachments on the Iranian assets and to order their transfer. In Regulations issued February 26, 1981, Treasury stated that it would not seek to enforce the transfer requirement (through the application of civil and criminal sanctions) until there had been a definitive legal ruling upholding the President's authority. Today's action removes this protection from enforcement action from the Regulations. Holders of assets to be transferred are obligated under the new amendments to take all action they believe necessary to effect the required transfers.

The June 19 date is a firm one under the present circumstances. However, it should also be emphasized that if the Supreme Court accepts for review and sets for argument on an expedited basis an appropriate case which properly presents the legal issues surrounding the transfer of these assets, the holders of these assets can be assured that the enforcement policy would be adjusted accordingly. We beiieve that the case for which Supreme Court review has already been sought, *Electronic Data Systems Corp. v. Social Security Organization of the Government of Iran*, is not such an appropriate case.

Both the present Attorney General and his predecessor had given opinions that the President's Executive Orders, upon which the Treasury transfer requirements are based, are lawful.

Department of the Treasury

Office of Foreign Assets Control
31 CFR Part 535

Iranian Assets Control Regulations:
Transfer of Financial Assets
to Federal Reserve Bank of New York

AGENCY: Office of Foreign Assets Control.
ACTION: Final Rule.

SUMMARY: The Office of foreign Assets control is amending the Iranian Assets Control Regulations. The purposes of the amendments are: (1) to direct banks and other persons holding Iranian financial assets to transfer them to the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981; (2) to revoke the policy of not seeking to impose criminal and civil sanctions on holders of Iranian property who do not comply with the transfer requirements of the Iranian Assets Control Regulations; (3) to provide additional guidance on the meaning of the term "commercially reasonable" rates of interest; (4) to make clear that no transfer requirement under section 535.213 or 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond, or similar obligation as to which a blocked account has been established pursuant to section 535.568 or as to which payment is prohibited under an injunction obtained by the account party; and (5) to require that persons making the required transfers of financial assets of Iran to the Federal Reserve Bank of New York promptly report on those transfers to the Office of Foreign Assets Control.

The amendments are needed to facilitate the ongoing implementation of the Iran-U.S. agreements of January 19, 1981, providing for the release of the hostages detained in

Iran and the transfer of Iranian property blocked by the United States.

In a recent decision, *Chas. T. Main International, Inc. v. Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir., May 22, 1981), the United States Court of Appeals for the First circuit held that the President has authority to order the transfer of blocked Iranian assets without regard to attachments or other judicial orders obtained subsequent to the November 14, 1979, blocking order, and that he has the authority to settle claims of U.S. parties against Iranian entities by providing for their submission to binding arbitration.

Similarly, the United States Court of Appeals for the District of Columbia Circuit, in *American International Group v. Islamic Republic of Iran*, No. 80-1779 (D.C. Cir., May 22, 1981), reviewed the Executive Orders nullifying attachments and suspending claims in implementation of the January 19, 1981, agreements, and rendered a judgment that the suspension of claims "is a lawful exercise of the President's power to arrange for the settlement of claims of American nationals against the governments of foreign states," and directed that attachments and other provisional remedies be vacated. These decisions confirm the legal judgments reached by the present Attorney General of the United States, and his predecessor, upholding the President's authority to order the prompt transfer of property in which Iran has an interest. Further, they provide the basis for revocation of the policy established by the prior regulations against the seeking of civil and criminal sanctions against persons who hold or control Iranian property required to be transferred.

Section 203(a)(3) of the International Emergency Economic Powers Act (50 USC 1702(a)(3)), Section 1-103 of Executive Order 12279, Section 1-103 of Executive Order 12280, Section 1-103 of Executive Order 12281 and Section 535.219 of the Iranian Assets Control Regulations provide

that compliance with the transfer directives of the Iranian Assets Control Regulations shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligations of the person so complying and further provide that no person shall be liable in any United States court for anything done or omitted in good faith compliance therewith.

EFFECTIVE DATE: June 4, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION: Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

31 CFR Part 535 is amended as follows:

1. Section 535.213 is amended by the revocation and removal of paragraph (b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

* * *

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of section 535.221 of this part, and such funds, securities or deposits, plus interest at commercially reasonable rates from November 14, 1979, to the transfer date, shall be received by the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981. For periods for which rates are to be determined in the future, whether by agreement between Iran and the bank or otherwise (see section 535.440), interest for such periods shall be transferred to the Federal Reserve Bank of New York promptly upon such determination. Persons in possession or control of property required to be transferred by this section shall take all actions they believe necessary to effect the required transfers.

* * *

(d) The transfers of securities required by this section shall be made notwithstanding section 535.202.

2. Section 535.214 is amended by the revocation and removal of paragraph (b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

* * *

(b) Transfers of funds and securities under paragraph (a) of this section shall be in accordance with the provisions of section 535.221 of this part, and such funds and securities shall be received by the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981. Persons in possession or control of property required to be transferred by

this section shall take all actions they believe necessary to effect the required transfers.

* * *

(d) The transfers of securities required by this section shall be made notwithstanding section 535.202.

3. Section 535.221 is amended by the revocation and removal of paragraphs (a), (b) and (f), by the revision and paragraphs (c) and (d) and by the relettering of paragraphs. As amended, section 535.221 reads as follows:

Section 535.221 *Compliance with directive provisions.*

(a) Transfers of deposits or funds required by sections 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following accounts: with respect to transfers required by section 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account A, and with respect to transfers required by section 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account B.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York to the appropriate account named in this paragraph.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department, to the appropriate account named in this paragraph.

(c) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have the security placed in fully transferable form (bearer or endorced in blank) as provided in paragraph (b) of this section, and transferred pursuant to paragraph (b)(2) of this section.

(d) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (b) shall provide the Bank at least two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book-entry form.

4. Section 535.337 is amended to read as follows:

Section 535.337 *Funds.*

For purposes of this part, the term "funds" shall mean monies in trust, escrow accounts and similar special funds, money market funds, cash balances held by a broker/dealer, currency and coins. It does not include accounts created under section 535.568.

5. Section 535.438 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) as follows:

* * *

(b) No transfer requirement under section 535.213 or 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond or similar obligation as to which a blocked account has been established pursuant to section 535.568 or as to which payment is prohibited under an injunction obtained by the account party.

6. Section 535.440 is amended to read as follows:

Section 535.440 *Commercially reasonable interest rates.*

For purposes of section 535.212 and 535.213, what is meant by "commercially reasonable rates" depends on the particular circumstances. In the case of time or savings deposits, the "commercially reasonable rate" is that rate provided for by the deposit agreement or applicable law. With respect to other obligations where the rate remains to be determined, it is presently expected that the "commer-

cially reasonable rate'' will be the rate agreed upon by the bank and Iran. However, where a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of sections 535.212 and 535.213 as a non-interest-bearing account.

7. New section 535.620 is added as follows:

Section 535.620 *Report of Transfer of domestic bank assets and financial assets held by nonbanking institutions.*

(a) *Requirement for reports.* A report shall be filed on Form TFR-620 by any bank or nonbanking institution regarding any transfer to the Federal Reserve Bank of New York under sections 535.213 and 535.214 within 5 business days of such transfer.

(b) *Contents of report.* Each report shall contain the following information:

(1) Name and address of the transferor (indicate whether bank or nonbanking institution).

(2) Name and telephone number of person to be contacted about the transfer.

(3) Description of the property transferred with a list of accounts transferred, including account party, account number, and account amount, with breakdown between principal and interest.

(4) Total value (market value in the case of securities) of each transfer.

(5) Date and time of transfer.

(6) A statement as to how interest was calculated, including rate(s) of interest and period(s) for which the rate(s) was applied.

(c) *Filing.* Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 620, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy shall be retained for the reporter's records.

(d) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential but may be disclosed to Iran.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111.)

Dated: June 4, 1981

Dennis M. O'Connell
Director

Approved: John P. Simpson
Acting Assistant Secretary,
Enforcement and Operations

Declaration of the Government of the Democratic and Popular Republic of Algeria.

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran. On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two governments:

GENERAL PRINCIPLES

The undertakings reflected in this Declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

B. It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular

Republic of Algeria, to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

Point I: Non-Intervention in Iranian Affairs

1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

Points II and III: Return of Iranian Assets and Settlement of U.S. Claims

2. Iran and the United States (hereinafter "the parties") will immediately select a mutually agreeable central bank (hereinafter "the Central Bank") to act, under the instructions of the Government of Algeria and the Central Bank of Algeria (hereinafter "The Algerian Central Bank") as depositary of the escrow and security funds hereinafter prescribed and will promptly enter into depositary arrangements with the Central Bank in accordance with the terms of this declaration. All funds placed in escrow with the Central Bank pursuant to this declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set forth in this Declaration and in the Declaration of the Democratic and Popular Republic of Algeria concerning the settlement of claims

by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter "the Claims Settlement Agreement") are separately set forth in certain Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Democratic and Popular Republic of Algeria.

3. The depositary arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately all monies or other assets in escrow with the Central Bank pursuant to this declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall have the right on seventy-two hours notice to terminate its commitments under this declaration.

If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within the seventy-two hour period of notice, the Algerian Central Bank will thereupon instruct the Central Bank to transfer such monies and assets. If the seventy-two hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the Central Bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this declaration shall be of no further force and effect.

ASSETS IN THE FEDERAL RESERVE BANK

4. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States

will bring about the transfer to the Central Bank of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3 above.

ASSETS IN FOREIGN BRANCHES OF U.S. BANKS

5. Commencing upon the completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after November 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through December 31, 1980, to be held by the Central Bank, to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with Paragraph 3 of this Declaration.

ASSETS IN U.S. BRANCHES OF U.S. BANKS

6. Commencing with the adherence by Iran and the United States to this declaration and the claims settlement agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing security account specified in that agreement and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank, within six months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3.

7. As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of $1 billion. After the $1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below $500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of $500 million in the account. The account shall be maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran.

OTHER ASSETS IN THE U.S. AND ABROAD

8. Commencing with the adherence of Iran and the United States to this declaration and the attached claims settlement agreement and the conclusion of arrangements for the establishment of the security account, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in

Paragraph 5 and 6 above, to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this declaration and the attached claims settlement agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

NULLIFICATION OF SANCTIONS AND CLAIMS

10. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date.

11. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals of their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and

preclude the prosecution against Iran in the courts of the United States of any pending or future claim asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

Point IV: Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within the U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of

state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

SETTLEMENT OF DISPUTES

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of this declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. Any decision of the tribunal with respect to such dispute, including any award of damage to compensate for a loss resulting from a breach of this declaration or the claims settlement agreement; may be enforced by the prevailing party in the courts of any nation in accordance with its laws.

Initialed on January 19, 1981

By Warren M. Christopher

Deputy Secretary of State of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran.

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

ARTICLE I

Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this agreement shall be submitted to binding third-party arbitration in accordance with the terms of this agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

ARTICLE II

1. An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures

affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3 The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981, over any dispute as to the interpretation or performance of any provision of that declaration.

ARTICLE III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the parties or by the tribunal to ensure that this agreement can be carried out. The UNCITNAL rules for appointing members of three-member Tribunals shall apply *mutatis mutandis* to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this agreement shall be presented to the Tribunal either by claimants themselves, or, in the case of claims of less than $250,000, by the Government of such national.

4. No claim may be filed with the Tribunal more than one year after the entry into force of this agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 7 of the Declaration of the Government of Algeria of January 19, 1981.

ARTICLE IV

1. All decisions and awards of the Tribunal shall be final and binding.

2. The President of the Tribunal shall certify, as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January 19, 1981, when all arbitral awards under this agreement have been satisfied.

3. Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

ARTICLE V

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

ARTICLE VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.

2. Each government shall designate an agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communication directed to it or to its nationals, agencies, instrumentalities, or entitled in connection with proceedings before the Tribunal.

3. The expenses of the Tribunal shall be borne equally by the two governments.

4. Any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon the request of either Iran or the United States.

ARTICLE VII

For the purposes of this agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agareement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in judicial persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this agreement. Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.

3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

4. The "United States" means the Government of the United States, any political subdivision of the United States, any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

ARTICLE VIII

This agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the agreement.

Initialed on January 19, 1981
by Warren M. Christopher
Deputy Secretary of State of the Government of the United States
By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

Department of State, Telex
Travel Warning-Iran – January, 27, 1981

Begin text of travel warning: Travel to Iran:

All american citizens contemplating travel to Iran are advised that they should avoid such travel. Travel to Iran is extremely hazardous because of the continued anti-American atmosphere, the virulent anti-American stance of the Iranian government and the present conflict between Iran and Iraq. The possibility exists that American citizens traveling to Iran could be detained without charge or taken hostage. American interests in Iran are currently served by the Swiss Government acting through its embassy in Tehran, but protective services are severely limited by present conditions. Under these circumstances, the department of state strongly urges United States citizens to avoid any travel to Iran.

This warning superseded the formal restriction on travel to Iran which was effective on April 23, 1980. End text of travel warning. Haig

The White House Press Release,
November 14, 1979

The President has today acted to block all official Iranian assets in the United States, including deposits in United States banks and their foreign branches and subsidiaries. This order is in response to reports that the Government of Iran is about to withdraw its funds. The purpose of this order is to insure that claims on Iran by the United States and its citizens are provided for in an orderly manner.

The order does not affect accounts of persons other than the Government of Iran, the Central Bank of Iran and other controlled entities. The precise amounts involve cannot be ascertained at this time, but there is no reason for disturbance in the foreign exchange or other markets.

The President is taking this action pursuant to the International Emergency Economic Powers Act, which grants the President authority "to deal with any unusual and extraordinary threat to the national security, foreign policy, or economy of the United States."

Excerpt From President Carter's News Conference of April 17, 1980 Situation in Iran

THE PRESIDENT. Since last November, 53 Americans have been held captive in Tehran, contrary to every principle of international law and human decency. The United States began to implement a series of nonviolent but punitive steps, designed to bring about the release of our hostages.

In January, we receive information and signals from the Iranian authorities that they were prepared to enter into serious discussions to bring about the release of the hostages. At that time the United States decided to defer additional sanctions, and then these discussions resulted in commitments from the top authorities in Iran, including a transfer of the hostages to Government control, to be followed by their release.

These commitments were not fulfilled. Earlier this month, April the 7th, I announced a series of economic and political actions designed to impose additional burdens on Iran because their Government was now directly involved in continuing this act of international terrorism.

This process is moving forward. We've imposed economic sanctions, and we have broken diplomatic relations with Iran. Recently a number of other nations have recalled their ambassadors, and these countries are now considering sanctions they may be prepared to invoke in the near future.

Even while these deliberations continue, officials in Iran talk about not resolving the hostage issue until July or even later. We are beyond the time for gestures. We want

our people to be set free. Accordingly, I am today ordering an additional set of actions.

First, I am prohibiting all financial transfers by persons subject to the jurisdiction of the United States to any person or entity in Iran, except those directly related to the gathering of news and family remittances to the hostages.* As of today, any such transaction will become a criminal act.

Second, all imports from Iran to the United States will be barred.

Third, I intend to exercise my statutory authority to protect American citizens abroad by prohibiting travel to Iran, and by prohibiting any transactions between Americans and foreign persons relating to such travel or the presence of Americans in Iran. Again, this authority will not now be used to interfere with the right of the press to gather news. However it is my responsibility and my obligation, given the situation in Iran, to call on American journalists and news-gathering organizations to minimize, as severely as possible, their presence and their activities in Iran.

Fourth, I am ordering that all military equipment previously purchased by the Government of Iran, which I had previously impounded, be made available for use by the United States military forces or for sale to other countries.

And finally, I will ask Congress for discretionary authority to pay reparations to the hostages and to their families out of the more than $8 billion in frozen Iranian assets in the United States. These assets will be available to satisfy contract and other commercial claims of American

*The sentence should end with the word "remittances." [White House correction.]

firms against Iranian Government entities and to reimburse claims of the United States for the heavy military and other costs we have incurred because of Iran's illegal actions.

No. 80-2111

FILED
JUN 15 1981

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

AMERICAN BELL INTERNATIONAL INC.,
Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN AND THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment

OPPOSITION OF RESPONDENTS THE ISLAMIC REPUBLIC OF IRAN AND THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN TO MOTION FOR EXPEDITED CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI AND RELATED RELIEF AND RESPONSE TO PETITION FOR CERTIORARI BEFORE JUDGMENT

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The Islamic Republic of Iran (the "Government of Iran") and the Ministry of Defense of the Islamic Republic of Iran hereby oppose petitioner's motion for expedited consideration of the petition for writ of *certiorari* before judgment and related relief and respond to the petition for writ of *certiorari* before judgment. Specifically, respondents concur with petitioner's suggestion (Pet. at 19 n.9) that the Court place the petition on "hold" status, pending the Court's final disposition of *Dames & Moore v. Donald T. Regan*, No. 80-2078 (U.S.).

It is true that petitioner's case raises virtually identical issues as those presented in *Dames & Moore* with respect to the vacation of prejudgment attachments* However, the impact of the forum-selection clause in petitioner's contract on the President's authority to vacate the prejudgment attachments is already before the Court in the opinion of the United States Court of Appeals for the District of Columbia Circuit in *American International Group, Inc. v. Islamic Republic of Iran,* No. 80-1179 (D.C. Cir. June 5, 1981) (typescript op. appended to the United States' memorandum in No. 80-2078). The D.C. Circuit held, *inter alia,* that the President's power to vacate attachments issued under a revocable license does not depend upon the ability of the party to seek relief from the Iran-United States Claims Tribunal. *AIG* typescript op. at 11; *accord,* partial tr. of hearing in *American Bell International Inc. v. Islamic Republic of Iran,* Civ. Act. No. 80-0321 (D.D.C. June 11, 1981) (Pet. App. 6(a).)

In these circumstances consolidation of this petition with the writ granted to *Dames & Moore* at this point will only burden a highly expedited briefing and argument schedule, while it will not present issues to the Court that are not already properly before it.

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* Unlike the issues before the court in *Dames & Moore,* this petition does not challenge the Executive's power to settle claims under the Algerian Declarations. (Pet. at 10.)

Respondents therefore request that the petition be put on "hold" status should any additional ruling be necessary after the Court's final disposition of *Dames & Moore.*

Respectfully submitted,

/s/ THOMAS G. SHACK, JR.

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No. 80-2111

IN THE

Supreme Court of the United States

October Term 1980

AMERICAN BELL INTERNATIONAL INC.,

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ISLAMIC REPUBLIC OF IRAN AND THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of Respondents the Islamic Republic of Iran and the Ministry of Defense of the Islamic Republic of Iran has been served this 15th day of June, 1981, on the following in the manner indicated:

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